



## Juvenile Justice Training Academy Lesson Plan

Program: <b>Juvenile Probation   Supervision Officer Basic Course</b>		Citation Source: <b>TAC Chapter 344</b>
Required by: <input type="checkbox"/> Texas Statute <input checked="" type="checkbox"/> Texas Administrative Code <input type="checkbox"/> Professional Development		
Training Title: <b>Understanding Professional Liability</b>		
Developed By: <b>Rebecca Marquez, Training Specialist V</b>		Date: <b>January 2014</b>
Revised By: <b>Delisha McLain, Curriculum Developer</b>		Date: <b>April 24, 2018</b>
<b>PARAMETERS</b>		
Course Duration: <b>2.00 Hours</b>	Minimum   Maximum Number of Participants Recommended: <b>5 - 50</b>	
Instructional Setting: <b>Classroom</b>	Target Audience: <b>Juvenile Probation   Supervision Officers completing mandatory training.</b>	
<b>COURSE DESCRIPTION</b>		
This course is designed to establish a foundational understanding of job-related legal liabilities, consequences, and protections.		
<b>APPROVALS</b>		

### Technical Authority

Jill Mata, General Counsel  
Office of General Counsel

Date

### Training Authority

Chris Ellison, Manager  
Juvenile Justice Training Academy

Date

### Training Authority

Kristy Almager, Director  
Juvenile Justice Training Academy

Date

## PERFORMANCE OBJECTIVES

At the conclusion of this course, participants will be able to:

1. Summarize the common liability areas that may lead to undesired legal consequences.
2. Explain the differences between criminal, civil, and administrative consequences.
3. Outline the legal protections available to juvenile justice professionals.

## INSTRUCTOR MATERIALS

1. TJJD Approved Lesson Plan, April 24, 2018
2. Copy of current Participant Guide, April 24, 2018
3. Handout-1: Statement Cards (Classroom Set), April 24, 2018
4. Power Point Show, April 24, 2018

## PARTICIPANT MATERIALS

1. Participant Guide, April 24, 2018

## REFERENCES

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2. Dawson, Dr. Robert O. *Texas Juvenile Law*. 8th edition. Texas Juvenile Justice Department. Austin, Texas. December 2012.
3. Del Carmen, Rolando V., Maldine Beth Barnhill, Gene Bonham, Jr., Lance Hignite, and Todd Jermstad. *Civil Liabilities and Other Legal Issues for Probation/Parole Officers and Supervisors*. 3rd edition. United States Department of Justice: National Institute of Corrections. Washington, DC. 2001.
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5. HuffPost. Crime. *NY Prison Worker Sentenced for Helping Inmates Escape*. [http://www.huffingtonpost.com/entry/joyce-mitchell-sentenced\\_us\\_56094805e4b0dd8503081a9c](http://www.huffingtonpost.com/entry/joyce-mitchell-sentenced_us_56094805e4b0dd8503081a9c). September 28, 2015. Updated January 4, 2017. Accessed May 23, 2017.
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  11. Nolo. The Juvenile Justice System. *Juvenile Law: Status Offenses*. <https://www.nolo.com/legal-encyclopedia/juvenile-law-status-offenses-32227.html>. Accessed December 22, 2017.
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## ACKNOWLEDGEMENTS

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3. Thomas, Nydia, Special Counsel. Texas Juvenile Justice Department: Office of General Counsel (OGC) – Legal Education and Technical Assistance. Subject Matter Expert.

## EQUIPMENT AND SUPPLIES

- |                                                       |                                                                |
|-------------------------------------------------------|----------------------------------------------------------------|
| <input checked="" type="checkbox"/> Projector         | <input checked="" type="checkbox"/> Screen                     |
| <input checked="" type="checkbox"/> Laptop computer   | <input type="checkbox"/> Post-it® Notes                        |
| <input checked="" type="checkbox"/> External speakers | <input checked="" type="checkbox"/> Laser Remote               |
| <input type="checkbox"/> Chart Pad(s):                | <input checked="" type="checkbox"/> Batteries for Laser Remote |
| <input type="checkbox"/> Easel Stand (s):             | <input type="checkbox"/> Other:                                |
| <input type="checkbox"/> Marker(s):                   |                                                                |

## SCHEDULE

Introduction .....	15:00
Section I: Legal Liabilities.....	25:00
Section II: Legal Consequences .....	45:00
Section III: Protections .....	25:00
Final Thoughts .....	10:00

## LEGEND



### For Your Eyes Only

This is information for the Trainer only – it is facilitator guidance (i.e. Activity Instructions)



### Speaker Notes

This will indicate information to be shared with participants



### Action

This will direct facilitator when to do something (i.e. click to activate bullets, start media if necessary, chart participant responses)



### Activity

This will indicate activity (small or large; individual or collaborative) before continuing on with presentation

Note: Unless otherwise indicated in the lesson plan and based on class size, the trainer has the discretion to use a designated group activity as an individual activity. The trainer shall process the activity, whether as designated or individually in an effort to maximize the learning environment for the participants.

## IMPORTANT TRAINER INFORMATION

1. Prepare a **Parking Lot**. If a particular training course lends itself to potentially lengthy discussions that compromise training time, trainers are encouraged to prepare and use a Parking Lot in an effort to manage questions and time constraints efficiently. The Parking Lot is a piece of blank chart paper, titled **Parking Lot**. Paper is placed on a wall at the beginning of the training session, easily accessible to everyone. If the Parking Lot is used, place several pads of post-it® notes on participant tables for use during the training session and provide participants instructions on how a Parking Lot is used during training.

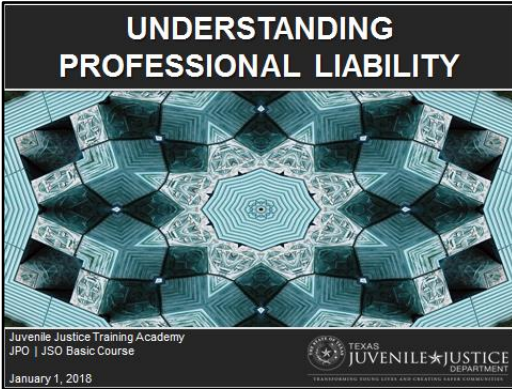
The Parking Lot's purpose is to track questions asked by participants and allows trainer to either research an appropriate answer or respond to the question at the applicable time during the lesson plan. Prior to ending the training session, the trainer will review questions posted on the Parking Lot to determine if all have been answered or if additional research is needed. Trainer will either ask participants to confirm all posted questions have been answered satisfactorily or will acknowledge to participants the need to seek additional clarification from a subject matter expert (SME), the curriculum developer (CD), or other approved resource. A follow-up email should be provided to participants in the training session.

2. Cover all activities unless marked Optional.
3. Time noted for an activity represents the entire activity process: introducing the activity, performing the activity steps, and debriefing the activity. During assigned activities, participants should be informed they have a "few" minutes to complete an activity instead of a set number of minutes (example: 10 minutes). This allows the trainer to shorten or lengthen time as needed.
4. During question and answer sessions or activities:
  - a. Questions followed by the (*Elicit responses.*) statement – should be limited to 1 or 2 participant responses. These questions are used to gain audience acknowledgement and not meant to be a lengthy group discussion.
  - b. Questions followed by an italicized (suggested) response – are to be covered by the trainer or participants. If participant responses do not cover the complete italicized response, the trainer will provide participants with the remaining information. The responses provided are suggested best answers as approved by the Technical Authority. If participants suggest other responses, encourage them to explain their choices.

**Disclaimer:**

The following curriculum was developed by the Texas Juvenile Justice Department in collaboration with the Regional Training Officer Group of the Sam Houston State University Correctional Management Institute of Texas. Approved curriculum is signed by both a Technical and Training Authority. The Certification exam is based on approved TJJD standardized curricula. TJJD is mindful some examples referenced in the lesson plan may not be applicable in particular counties.


Deviations regarding the material are discouraged; however, enhancements explaining local policy and procedure without breaching the fidelity of the information are supported. If a participant requires additional information beyond the scope of this curriculum, refer the participant to his (or her) immediate supervisor.



## Slide 1: Introduction

Instructor's Corner:

PG: 5

 Click when prompted in the lesson plan (LP) to play video titled *Consequences*.

### Trainer Notes:



## INTRODUCTION

*(Welcome participants to the course and discuss the agenda including information on breaks, lunch time, and other pertinent information. If using the "Parking Lot," prior to class, prepare a chart to use later as noted in the Important Trainer Information section of the LP. Place Post-it® notes on the tables or next to the Parking Lot chart for participant use.)*

*(The Texas Juvenile Justice Department is mindful some examples referenced in the lesson plan may not be applicable in certain counties. Deviations from this TJJD approved curriculum are discouraged; however, enhancements explaining local policy and procedure without breaching fidelity of the information are acceptable.)*

Welcome to training on *Understanding Professional Liability*. To begin, let's take a moment to watch a video and listen to some statements.

*(Click to play video. Length of video is 1 minute 20 seconds. While the video plays, hand out the two Statement Cards to different participants. When the video finishes, have the selected participants read the Statement Cards in the order presented below.)*

*(The following federal, state, and administrative cases are intended for the sole purpose of highlighting key legal liability concepts. Additional case law may apply.)*

### **Statement Card 1**

In 2009, a federal Court of Appeals upheld a jury's verdict to award an inmate \$75,000 in compensatory damages and \$125,000 in punitive damages on his claim that a correctional officer attacked him without justification for the purpose of maliciously doing him harm. The court found that both the compensatory and punitive damage awards were justified by the evidence.

### **Statement Card 2**

In 2007, a juvenile formerly detained at the Texas Youth Commission, now known as the Texas Juvenile Justice Department (TJJD), reached a financial settlement with the agency for an undisclosed amount. The juvenile, who was serving a two year commitment, was beaten by four other juveniles while juvenile correctional officers (JCOs) assigned to his housing unit were not at their station. The juvenile alleged the officers allowed the assault, which sent him to the emergency room, because they didn't like him. The officers were fired for neglect.

**Q: What are your thoughts about the pictures we just saw and the statements we just heard?** *(Elicit responses.)*

It may be difficult to imagine these situations happening to you but dealing with legal issues is an eye opening part of being a juvenile justice professional.

A supervision or probation officer has several responsibilities that must be performed while on duty. You must follow all rules, policies, and procedures and can be subject to legal consequences if you don't. During the course today, we will review some of the most common liabilities juvenile justice professionals may face; discuss the criminal, civil, and disciplinary consequences of those liabilities; and explore some ways in which you can avoid these legal issues.

**Q: What questions do you have about the topic today?** *(Answer questions, if any.)*



### Performance Objectives

- Summarize the common liability areas that may lead to undesired legal consequences.
- Explain the differences between criminal, civil, and administrative consequences.
- Outline the legal protections available to juvenile justice professionals.

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## Slide 2: Performance Objectives

Instructor's Corner:

PG: 5

Trainer Notes:



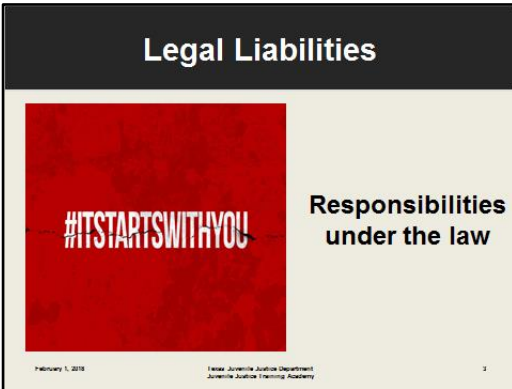
### Performance Objectives

Let's take a moment to go over what we will accomplish today. *(Ask different participants to read each of the performance objectives.)*

At the end of this course, you should be able to:

1. Summarize the common liability areas that may lead to undesired legal consequences.
2. Explain the differences between criminal, civil, and administrative consequences.
3. Outline the legal protections available for juvenile justice professionals.


**Q: What questions do you have before we begin?** *(Answer questions, if any.)*



### Slide 3: Legal Liabilities

Instructor's Corner:

PG: 5

 This slide comes up with a picture. When prompted in the LP, click for definition to appear.

Trainer Notes:



## LEGAL LIABILITIES

The material covered during this course is for informational purposes only and must not be considered “legal advice.” While we encourage questions, contact your supervisor, local county prosecutor, or a private attorney for questions about specific legal matters. For technical assistance and resource information, contact the Texas Juvenile Justice Department’s (TJJD) Legal Help Desk at 512.490.7121.

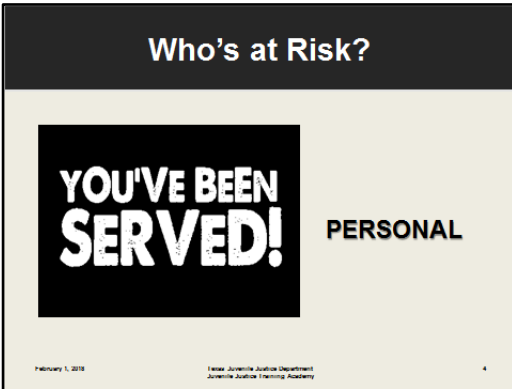
### Definition

*(Click for definition to appear as you talk about it.)*

**Q: What does it mean to be legally liable?** *(Elicit responses.)*

Being legally liable means being responsible for your own acts or failures to act under the law. In other words, your official job duties may make you vulnerable to legal proceedings, or lawsuits, if you act improperly or fail to act as defined by federal, state, and agency laws and policies.


Let's turn our discussion to who is at risk when working in a juvenile justice setting.



#### Slide 4: Who's at Risk?

Instructor's Corner:

PG: 5

 This slide comes up blank. When prompted in the LP, click for each of two pictures to appear.

#### Trainer Notes:



### Who's At Risk?

A lawsuit may be brought against anyone who has a connection with a case.

*(Click for party at risk to appear as you talk about it.)*

### Personal Liability

At some point in your career, you may be sued personally. If this occurs, someone is claiming you had some kind of personal responsibility, or liability, while working as a juvenile justice professional. If the case is not found in your favor, you may end up doing jail time for a crime, paying money directly from your own pocket if there is no government insurance or government reimbursement, or losing your job.

*(Click for party at risk to appear as you talk about it.)*

### Bystander Liability

When an event occurs, there are often witnesses or bystanders. While on the job, if you

are a witness to an act or failure to act and you do not report it, you may be held liable in a criminal case or named in a civil lawsuit. As an officer, federal law indicates you may be held responsible as a bystander if you:

- know a fellow officer is violating an individual's constitutional rights;
- have reasonable opportunity to prevent harm; and
- choose not to act.

Keeping the inappropriate behavior of a fellow officer a secret does not benefit them or you. To truly have your coworkers' backs, you must be willing to report them if they are in violation of federal or state laws, or department policies. You may prevent the smaller acts they commit from turning into more significant acts which may land both of you in a courtroom for criminal, civil, and/or administrative proceedings.

**Q: What questions do you have about personal or bystander liability?** (*Elicit responses.*)

Your acts, failures to act, and the acts of your coworkers do not affect just you personally; they may leave others at risk as well, including your supervisor, department, facility, county, or TJJD.



## Slide 5: Vicarious Liability

Instructor's Corner:

PG: 5

⚠ This slide comes up blank. When prompted in the LP, click for two pictures to appear as you talk about them.

### Trainer Notes:



## Vicarious Liability

**Q: What is vicarious liability?** (*Elicit responses.*)

Vicarious liability occurs when those in a managing role, such as a supervisor or department, are held liable for the actions of the employees they oversee.

(*Click for supervisor picture to appear.*)

## Supervisors

Supervisors may be held responsible, or liable, for the actions of employees under their supervision.

**Q: When is a supervisor held responsible for the actions of his (or her) employees?**

(*Elicit responses.*)

A supervisor is liable for the acts of other employees when he (or she):

- specifically authorizes the act;
- typically authorizes acts of the same nature as the one in question; or
- knew of the act but did nothing to stop it from occurring.

When an employee acts improperly or fails to act when they should, their supervisor may have neglected to provide all of the information necessary to perform the job. There are seven common areas of supervisory neglect including:

- Negligent training | For example, failing to train as required.
- Failure to direct | For example, failing to explain the limits of a job.
- Negligent hiring | For example, failing to conduct proper background checks.
- Negligent supervision | For example, failing to correct known mistakes.
- Negligent assignment | For example, allowing a staff member with a reckless driving record continue to transport juveniles.
- Negligent entrustment | For example, authorizing untrained staff members to use de-escalation techniques requiring mandatory training.
- Negligent discipline | For example, failing to take corrective action when inappropriate or unauthorized behavior is demonstrated.

Supervisors may be sued for any of these failures and acts of negligence.

*(Click for picture of agency/department to appear.)*

## **Department or Facility**

Lawsuits may also be filed against a department, county, or facility as well as individuals working within them when it has been claimed the department, county, or facility

directly or indirectly played a role in an employee's conduct or action. These parties may also be named in the a lawsuit under the "deep pockets theory"; or the idea the department, county, or individuals connected with them have more money to pay large damages than an individual.

**Q: Apart from supervisors, who in the department may be sued vicariously because of employee actions?** *(Elicit responses.)*

Those that may be sued vicariously for employee actions may include:

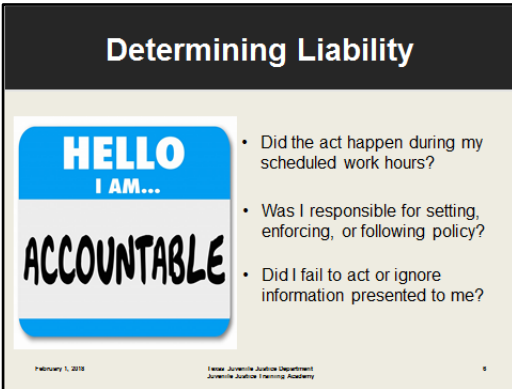
- Supervisors
- Managers or Directors
- Chief Juvenile Probation Officer (CJPO) or Facility Administrator

Juvenile probation or supervision officers may be included in a lawsuit; though they are often just one name among many. Although anyone may be named in a lawsuit, state law determines the actual person responsible for paying particular dollar amounts.

**Q: What questions do you have about vicarious liability?** *(Elicit responses.)*

Liability may fall on you, a bystander, a supervisor, department, facility, or county so let's take a moment to determine how you might know if you are liable.






## Slide 6: Determining Liability

Instructor's Corner:

PG: 6

 This slide comes up with a picture. When prompted in the LP, click for each of three questions to appear.

Trainer Notes:



## Determining Liability

*(Click for each of three questions to appear as you talk about them.)*

**Q: How do you know if you are liable?** *(Elicit responses.)*

Any time an act occurs while you are at work and you begin to question your liability, consider the following three questions in regard to your official responsibilities, or legal liabilities:

- Did the act happen during my scheduled work hours?
- Was I responsible for setting, enforcing, or following policy?
- Did I fail to act or ignore information presented to me?

The answers to these questions may help in determining if you are liable and whether you should prepare for possible legal proceedings. We will discuss legal proceedings later but right now let's talk about the most common liabilities which often cause legal issues for juvenile justice professionals.



## Slide 7: Criminal Conduct | Liability

Instructor's Corner:

PG: 6

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### Trainer Notes:



## Criminal Conduct | Liability

When you were hired as a juvenile justice professional, the policies and procedures were discussed at length. There are an infinite number of situations in which you may be liable in your official capacity and suffer consequences. Later, we will talk about civil and criminal proceedings, but first, let's talk about some common laws, which if violated, could result in you being liable and subsequently sued in criminal court, civil court, or both.

*(Click for each of ten liabilities to appear as you talk about them.)*

For juvenile justice professionals, some common laws which, if violated, could result in causes of action include:

- Detention Hearings for Status Offenders and Non-Offenders

It is against the law for a JPO | JSO to knowingly detain or assist in detaining a juvenile non-offender being held for deportation in a secure detention or correctional facility. Further, a juvenile being held for a status offense must be released within 24 hours of being detained. A status offense is one in which there would be no arrest if an adult committed the same crime. Examples include truant

conduct, curfew violations, and running away. *(Civil and criminal consequences possible-Federal suit for illegal detention, Class B Misdemeanor)*

- Sexually Transmitted Infections (STIs), AIDS, and HIV Testing, Results Disclosure  
It is a crime to reveal or allow to become known information on test results or the STI | AIDS | HIV status of a juvenile. *(Class A Misdemeanor)*

- Improper Sexual Activity with Person in Custody  
JPOs and JSOs and other officials are prohibited from having sexual activity with persons in the custody of the Texas Juvenile Justice Department, or TJJD, in a juvenile facility, or under the supervision of a probation department (while not in custody). *(2<sup>nd</sup> degree felony or State jail felony)*

- Tampering with a Governmental Record  
If you knowingly make a false entry or alter records and either present it as a genuine government record or intentionally destroy, conceal, or remove a record criminal consequences could occur. This also includes tampering with a warrant issued by a magistrate. *(Class C up to 2<sup>nd</sup> degree felony; 3<sup>rd</sup> degree felony)*

- Violation of the Civil Rights of a Person in Custody, on Supervision, or Improper Sexual Activity  
You, along with employees, officials, peace officers, or volunteers commit an offense if you deny the rights or privileges to a person in custody or engage in sexual activity with an individual in custody. *(2<sup>nd</sup> degree felony)*

- Permitting or Facilitating an Escape  
If you or an employee of a facility knowingly permits or facilitates the escape of a

person in custody, you are subject to possible criminal consequences. (*Class A Misdemeanor up to 2<sup>nd</sup> degree felony*)

- Prohibited Substances and Items in a Detention Facility

If you provide or intend to provide a person in custody items such as, alcohol, controlled substances, dangerous drugs, a deadly weapon, cell phone, or any wireless device, etc., you may be liable. (*3<sup>rd</sup> degree felony*)

- Failure to Report; Penalty

A JPO, JSO, or Community Activities Officer (CAO) who has cause to believe a child's physical or mental health or welfare has been or may be adversely affected by abuse or neglect and fails to report could be sued. TJJD rules require juvenile justice professionals to report incidents of abuse, neglect, or exploitation (ANE) within 24 hours. (*Class A Misdemeanor; increased to State jail felony if abuse is intentionally concealed.*)

**Q: What questions do you have about these causes of action?** (*Answer questions, if any.*)

Let's do an activity.

---

Trainer Notes:



### For Your Eyes Only – Activity: Match the Action

1. Individually, have participants read each scenario and determine which cause of action in the word box matches the scenario.
2. Instruct participants to place a letter from the word box on the blank line next to the appropriately numbered scenario.
3. Inform participants some causes of action are used more than once.
4. Upon completion, have participants compare their answers with a partner.
5. Review the answers in the large group.

Activity Point: The point of this activity is to provide a quick review of the common causes of actions just discussed using short scenarios.



### Activity: Match the Action

**Time: 10 Minutes**

In your participant guides, turn to the activity titled *Match the Action*. Individually, read the scenario and then determine which cause of action from the word box the scenario refers to. Place the correct letter from the word box on the blank line next to the numbered scenario. Some causes of action are used more than once. When you are finished, compare your answers with a partner. We will then go over it in the large group.

## Debrief

### Scenarios

1. You forgot to sign a case plan a month ago and sign it today with the date from a month ago.

#### **D | Tampering with Government Record**

2. Discreetly giving a cell phone to a juvenile in detention.

#### **G | Prohibited Substances or Items in a Facility**

3. Not revealing a juvenile was assaulted by another juvenile in detention during your shift.

#### **H | Failure to Report**

4. Telling your neighbor a juvenile in detention is HIV positive.

#### **B | STIs | AIDS | HIV Testing | Medical Testing**

5. Recommending continued detention for a non-offender being held for deportation to keep her safe.

#### **A | Detention Hearing | Status Offense | Non-Offender**

6. Engaging in sexual activity with an 18-year-old juvenile while he is on probation.

#### **C | Improper Sexual Relationship with Person in Custody or Supervision**

7. Punishing a group of juveniles' in a facility because of the actions of one.

## **E | Violation of Civil Rights**

8. Overhearing a juvenile talk about escaping and not reporting it, even after she escaped the next day.

## **F | Permitting or Facilitating in Escape**

**Q: What questions do you have about legal liabilities, parties at risk, or causes of action?** *(Answer questions, if any.)*

We've discussed the meaning of legal liability, how it can apply to anyone, and reviewed common causes of action that may lead to lawsuits. Now, let's take a more in-depth look at the legal proceedings you may face if you fail to perform duties according to law and policy.



## Slide 8: Legal Consequences

Instructor's Corner:

PG: 8

⚠ This slide comes up blank. When prompted in the LP, click for each of three proceedings and then each of three acts to appear.

Trainer Notes:



## LEGAL CONSEQUENCES

For each duty not performed or illegal action, there are legal consequences, or proceedings, which may apply.

*(Click for each of three proceedings to appear as you talk about them.)*

### Types of Proceedings

There are three types of proceedings you may face if you fail to adhere to government laws and agency policies. These three proceedings are:

- Criminal
- Civil
- Disciplinary

All litigation or legal action falls into either criminal and/or civil proceedings.

Administrative proceedings may be initiated based on state or federal agency rules.

*(Click for each of three acts to appear as you talk about them.)*



Any one of these proceedings may occur when a person:

- violates a legal duty;
- commits an act; or
- does not perform an act that should have been performed.

Let's discuss each of these in more detail, starting with criminal proceedings.

Criminal Proceedings

- Prosecutor and defendant
- Beyond a reasonable doubt
- Crime committed
- Defendant committed the crime

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## Slide 9: Criminal Proceedings

Instructor's Corner:

PG: 8

This slide comes up with a picture. When prompted in the LP, click for each of four components of criminal proceedings, each of five criminal penalties, and two additional consequences to appear.

### Trainer Notes:



### Criminal Proceedings

*(The woman in the first picture is Joyce Mitchell, a prison worker, who helped two convicted murderers escape from prison in 2015 in upstate New York by providing them with tools including a chisel and hacksaw blades. She was sentenced to up to seven years in prison.)*

When someone breaks the law and is charged with a criminal offense, it means the person may be liable or responsible for the crime. These allegations lead to criminal proceedings which can occur on a federal, state, or local level.

*(Click for each of four components to appear as you talk about them.)*

The parties involved in federal and state criminal proceedings may include:

- a prosecutor, representing the federal or state government; and
- the defendant, the person charged with criminal behavior.

Many of us are familiar with the phrase *innocent until proven guilty*. Proof is needed to determine whether the defendant actually committed the crime for which he (or she) is accused. There are two components of proof in legal proceedings:

- Burden of proof | Indicates who has to prove the allegation(s) are true; and
- Standard of proof | Indicates the level of proof needed to show the allegation(s) are true.

**Q: Who has the burden of proof in a criminal proceeding?** (*Elicit responses.*)

In criminal proceedings, the burden of proof is on the prosecutor and the standard of proof is to prove *beyond a reasonable doubt*:

- a crime was committed; and
- the defendant committed the crime.

In other words, a prosecutor has to prove there is about a 95% chance or greater the defendant committed the crime. The percentage is for illustrative purposes only as no numbers are actually assigned to the levels of proof. The point is it takes a lot of evidence to convince a judge or jury beyond a reasonable doubt the defendant is guilty of a crime.

**Q: What happens if you commit a criminal offense while on duty?** (*Elicit responses.*)

All juvenile justice professionals are expected to follow all laws while on duty. If a criminal offense is committed by an employee, the local investigative authority will conduct an investigation to determine whether the evidence; including physical items, pictures, documentation, and witness testimony; meets the elements of the crime as specified by law. If so, local rules will dictate the next steps.

The legal consequences of criminal proceedings are largely the same regardless of whether the case is filed in a state or federal court.

**Q: What are some consequences a defendant convicted of a crime may face?** (*Elicit responses.*)

*(Click for each of five criminal penalties to appear as you talk about them.)*

If a defendant is convicted by judge or jury for a crime, he (or she) faces a full range of criminal penalties including:

- Community service
- A criminal record, including Sex Offender Registration
- Fines, restitution, fees
- Jail or prison
- Probation

For example, an employee in a juvenile facility was convicted of *Official Oppression* for improper sexual contact with a male juvenile in custody and received 2 years' probation. Any of these criminal penalties will cause a life to change in an instant and they are actually not the only consequences a criminal defendant may face.

*(Click for two additional consequences to appear as you talk about them.)*

Before a trial even begins public scrutiny in the media; whether through the news television or social media, may taint a defendant's reputation. Think about all the pictures of arrested juvenile officers we observed at the beginning of the training. Most of those

correctional officers had only been arrested; they had not yet been found guilty of a crime and still their pictures appeared in the media.

**Q: How do you think the public views those arrested juvenile officers?** *(Elicit responses.)*

The public may hold a guilty opinion of them before a trial even begins.

Some additional consequences of criminal proceedings include financial, family, and/or employment hardships. Financial issues may arise from a defendant not being able to provide for his (or her) family if jail time must be served or from legal, probation, or restitution fees assessed. Family issues may arise from lack of contact and loss of trust. Finally, employment hardships may arise due to a defendant's criminal status which may lead to job loss or inability to obtain a good paying job.

**Q: What questions do you have about criminal proceedings?** *(Answer questions, if any.)*

Let's turn our attention to civil proceedings.

Civil Proceedings




- plaintiff and defendant
- a preponderance of evidence
- defendant had legal duty
- defendant breached that duty
- defendant harmed plaintiff as result of breach
- breach was primary cause of harm done
- extent of "damages" to be paid

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## Slide 10: Civil Proceedings

Instructor's Corner:

PG: 9

 This slide comes up with a picture. When prompted in the LP, click for each of seven components of civil proceedings as well as one consequence to appear.

### Trainer Notes:



#### Civil Proceedings

When someone fails to perform a duty he (or she) should do, or does something he (or she) shouldn't do, that person is likely to face federal or state civil proceedings to resolve the matter.

*(Click for each of seven components to appear as you talk about them.)*

There are two parties involved in federal and state civil proceedings including:

- a plaintiff, the person or group suing
- a defendant, the person or group being sued

**Q: Who has the burden of proof in a civil proceeding?** *(Elicit responses.)*

Remembering our earlier discussion on proof, civil proceedings lay the burden of proof on the shoulders of the plaintiff and maintain a *preponderance of evidence* as the standard of proof.

**Q: What does a *preponderance of evidence* mean?** (*Elicit responses.*)

A *preponderance of evidence* is being able to present just enough evidence to make it “more likely than not” that what the plaintiff is claiming is true. This level of proof varies somewhat depending on the case and is a lower standard than what is required in a criminal proceeding. In other words, a plaintiff has to prove there is a greater than 50% chance the defendant breached his (or her) duty resulting in harm to the plaintiff. Again, the percentage is for illustrative purposes only as no numbers are actually assigned to the levels of proof. The point here is the burden of proof on a prosecutor in criminal proceedings is much higher than on a plaintiff in civil proceedings.

A federal or state civil proceeding may be filed when there is an allegation a person committed an act, or failed to act, *and* the plaintiff can prove:

- the defendant had a legal duty or obligation to fulfill;
- the defendant breached that duty (*in other words, the act broke or failed to observe a law, agreement, or code of conduct*);
- the defendant harmed the plaintiff as a result of that breach of duty either:
  - purposely; or
  - through negligence;
- the breach was the primary, or proximate, cause of the harm done; and
- the extent of the “damages” to be paid.

**Q: What is negligence?** (*Elicit responses.*)

A federal or state civil proceeding may occur whether the act was intentional, meaning it

was done to deliberately cause harm, or out of negligence. Negligence in civil suits include sins of omission, not doing something you should have done; and sins of commission, doing something you shouldn't have done.

For federal or state civil proceedings, negligence includes:

- Doing what a reasonably prudent, or sensible, person *would not have done*.
- *Failure to do that which a reasonably prudent person would have done in like or similar circumstances.*
- *Failure to exercise the degree of care that a reasonably prudent person would have exercised in like or similar circumstances.*

Negligence should not be confused with *deliberate indifference* which is the conscious or reckless disregard of the consequences of one's acts or failures to act. For example, a supervision officer places two juveniles that fought with each other earlier in the day next to each other during a housing unit meeting. During the meeting, the two juveniles begin to fight again resulting in one being seriously injured. The injured juvenile's parents sue because the supervision officer failed to separate the combative juveniles and did not report the earlier incident. The case is supported by evidence the incident occurred because the supervision officer ignored the strong likelihood the safety of the juveniles in the group would be at risk. The JSO may not be able to successfully defend against a claim of *deliberate indifference* because he or she failed to follow established policy and consciously disregarded the duty to take necessary precautions to protect the safety of each juvenile.

*(Click for monetary consequence to appear as you talk about it.)*

When someone doesn't fulfill their duties and is sued, it means the defendant may be



liable for the damages or harm done. In a civil proceeding, the defendant compensates the plaintiff for these damages or harm through monetary consequences.

**Q: What types of damages may a defendant have to pay?** (*Elicit responses.*)

There are two types of damages:

- Actual
- Punitive

Actual damages may consist of paying for things like medical bills and lost wages. The second type of damages is punitive.

**Q: What does punitive mean?** (*Elicit responses.*)

Punitive means penalizing or punishing. Punitive damages are designed to punish the individual defendant for his (or her) bad behavior. Punitive damages are often a severe monetary consequence against the individual who caused the wrong.

Additional fees a defendant may be required to pay include:

- Court costs
- Attorney's fees

*(Black out the PowerPoint (PPT) at this time.)*

Let's take a look at a quick scenario.

A JPO lines up five juveniles to go to the back of the office for anger management class. A juvenile at the end of the line becomes rowdy, calls the JPO a name, and slams him with the back of his elbow. The JPO throws a punch and breaks the juvenile's nose.

**1. What did the JPO do when the juvenile behaved inappropriately?**

He punched the juvenile.

**2. What was the result of the JPO's behavior?**

His punch broke the juvenile's nose.

**3. What was the JPO's legal duty in this situation, if any?**

As a juvenile justice professional, the JPO is entrusted with the care of the juvenile and should have:

- ensured the juvenile's safety as required by law, and
- followed the use of force policies, including de-escalation techniques, as required by the department.

**4. What legal action may be taken against the JPO?**

He may be sued in civil court and/or charged with a crime.

Let's discuss a few more scenarios during our next activity.

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Trainer Notes:



## For Your Eyes Only – Activity: But I Didn't Do Anything!

1. Divide participants into small groups of 2-4 individuals.
2. Using the scenarios found in the participant guide, instruct participants to read and discuss the scenarios, then answer the questions that follow.
3. Once finished, review the answers in the large group.

Activity Point: The point of this activity is to provide an opportunity to apply what participants have learned about civil proceedings to situations they could potentially face as a juvenile justice professional.



## Activity: But I Didn't Do Anything!

**Time: 15 Minutes**

In your participant guide, turn to the activity titled *But I Didn't Do Anything!* As a small group, read and discuss the scenarios, then answer the questions that follow. When you are finished, we will go over the answers together in a large group.

## Debrief

*(Have varying participants summarize each scenario to the large group before presenting the answers to their questions.)*

## Scenario 1

During the evening shift, a JSO staff doesn't show up for work. To remain in ratio, the detention supervisor decided he would supervise one of the housing units. The detention supervisor has some paperwork to do and tells a newly certified JSO to manage the housing unit and to call if he needed anything. An hour later, two juveniles begin to horseplay. Other juveniles push the JSO out of the way and form a standing circle around the two wrestling juveniles on the floor, blocking both the JSO and the camera's view. The other juveniles tell the JSO "it's nothing; we do this all the time." The JSO tells the two juveniles to stop, but they continue to wrestle. After 2 minutes, the JSO warns the juveniles he is about to radio for assistance and to "knock it off." The juveniles begin to scatter and the JSO sees one of the wrestlers is lying on the floor unconscious.

**Q: What does "horseplay" mean?** (*Elicit responses.*)

Horseplay includes participating in rough or boisterous conduct for the purpose of amusement such as running, wrestling, shadow boxing, giving a juvenile a "noogie," thumping, or practical jokes. It also refers to participating in unauthorized physical activities with juveniles such as recreation, physical education, or physical training. Only those authorized by job description may participate in such activities.

### 1. How did the JSO's behavior cause an injury?

While the JSO did not personally injure the juvenile, he also didn't:

- respond immediately to the situation even when he could not see what was happening; and

- failed to radio for assistance right away, instead only threatening to do so.

These actions may be perceived as negligence.

## **2. What legal duty did the JSO have in this situation?**

The JSO had a legal duty to provide safety and security to all juveniles assigned to the housing unit.

## **3. What consequences could the JSO potentially face?**

As the JSO breached, or did not fulfill, his duty when he failed to respond quickly and, as a result, an injury occurred; he could face both a civil lawsuit from the juvenile's family as well as department disciplinary action.

## **4. What liability, if any, does the detention supervisor face in this situation?**

The detention supervisor placed a newly JSO in charge and failed to provide appropriate supervision to the juveniles assigned to the housing unit. It could be argued that, as a result, the juveniles engaged in the undesirous behavior because there was only one staff member present. The detention supervisor should have been in the housing unit as well, particularly with a newly certified officer. Should a lawsuit arise from this situation, the detention supervisor may be named as a defendant as well.

## Scenario 2

Michael, currently on probation, is highly disruptive and has had multiple incidents with several juveniles since beginning a new substance abuse class. The facilitators of the class have expressed their frustration with Michael's JPO and reported the other juveniles in the class do not care for him.

A few days ago, Michael told the facilitator of the class he was having trouble with some of the other juveniles in the class that attend his school. The facilitator notifies Michael's JPO that there was history between Michael and some of the other participants in the class. The JPO asks the facilitator to remain patient and consistent with all juveniles in the class.

Before the class today, Michael's JPO received a phone call from Michael's counselor at school and was told he had gotten into a verbal altercation with another student, who happens to be in the same substance abuse class. The JPO notices the juveniles present for the class all seem to be tense and short-tempered as she walks them back to the conference room where the group will be held. During the class, Michael refuses to participate and eventually gets into a verbal argument with two juveniles, one of them from the altercation earlier. Despite the facilitator telling them to calm down, the juveniles shove Michael to the floor and begin punching and kicking him. The JPO hears the commotion and runs to the conference room. The two juveniles tell the JPO, "You're welcome" and sit back down in their seats. The JPO tells the juveniles, she will handle Michael next time and their behavior was inappropriate. Due to the commotion, the JPO ends the class early and leaves the office, figuring she will write an incident report the following day and will let Michael's parents know what happened. The JPO did not report the incident to her supervisor, nor did she inform Michael's parents of what

happened.

The next morning, the JPO receives a call from Michael's mother. She reported she noticed a large bump on Michael's head and he began complaining of dizziness and a headache. She took Michael to the hospital, where he was admitted after collapsing.

### **1. How did the JPO's behavior cause an injury?**

While the JPO did not physically harm Michael, she allowed other juveniles to assume her duties, power, and authority. She also failed to inform pertinent parties of the incident and did not seek medical intervention before Michael left. As a result, Michael ended up collapsing and being admitted to the hospital. Negligence may be argued in this case.

### **2. What duty did the JPO have in this situation?**

The JPO had a legal duty to provide for the safety and security of all the juveniles in the class as well as to report the incident to the juveniles' parents. She also had a legal duty to maintain control of the class, without solely relying on the facilitators to handle the situation. Finally, the JPO should have checked for injuries.

### **3. Why can the JPO be sued in civil court?**

It could be argued by the plaintiff the JPO was negligent because she had a legal duty to ensure the safety of the juveniles. She failed to check for injuries with Michael. She also allowed two juveniles to assault another juvenile, with no consequence or follow-up. In this case, the plaintiff would only have to prove Michael's injury was worsened by the

JPOs failure to act after a physical altercation.

Both of these scenarios provide a glimpse of the civil consequences an employee may face even when they aren't the ones committing, or failing to commit, the acts.

**Q: What questions do you have about these scenarios?** (*Answer questions, if any.*)

We have one more aspect of civil proceedings to discuss.



## **Civil Rights Cases**

When we think of civil proceedings at the federal level, civil rights cases are typically what comes to mind for most people.

**Q: What is a civil rights case?** (*Elicit responses.*)

A civil rights case is a lawsuit brought to federal or state court alleging violation of a plaintiff's constitutional right, or of a right given by federal or state law, and seeks damages or the discontinuation of certain policies and practices.

If a juvenile, or their representative, sues you in a civil rights case, he (or she) is most likely alleging you violated one or more of his (or her) constitutional rights.

To be successful, federal civil rights proceedings must involve:

- a violation of a constitutional right provided by federal (not state) law



- an official who is acting under the “color of law”

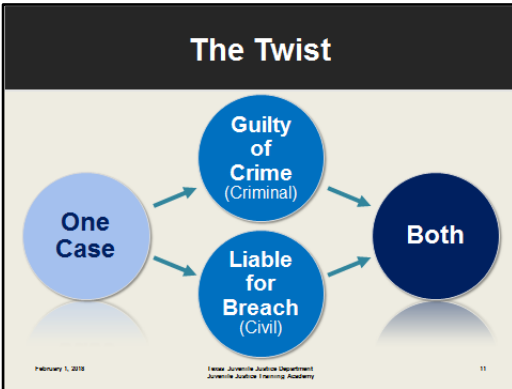
**Q: What does “color of law” mean?** (*Elicit responses.*)

Acting under the “color of law” is a federal concept that applies in both federal and state cases when a staff member presents themselves as an employee conducting official duties. When you claim to be conducting official duties on behalf of a department, all actions you make are considered acts under the “color of law.” This is the case regardless of whether or not the action is within the limits of your authority.

Almost everything juvenile justice professionals do with a juvenile falls under the “color of law” because of the nature of the relationship between them and juveniles. Juveniles on supervision regularly have contact with staff members, whether they are on court-ordered supervision or awaiting disposition.

**Q: What questions do you have about federal civil rights cases?** (*Answer questions, if any.*)

Now, let’s talk about some special circumstances that may happen in some cases.



### Slide 11: The Twist

Instructor's Corner:

PG: 11

⚠ This slide comes up with a text circle. When prompted in the LP, click for each of three additional text circles and two pictures with corresponding statements to appear.

### Trainer Notes:



#### The Twist

*(Return to the PPT at this time.)*

In some cases, there can be a bit of a twist. A cause of action resulting in both criminal and civil proceedings may leave you cleared in one and penalized in the other. In other words, when both criminal and civil liabilities are present, an individual may not be charged or found guilty of a crime in criminal court; but may be found liable in civil court.

*(Click for each of three text circles to appear as you discuss them.)*

For instance, a defendant may be found not guilty of a crime in a criminal case and be liable for breach of duty in a civil case, or vice-versa. One example of this is the OJ Simpson case from the 1990s.

*(Click for two pictures and their corresponding text to appear as you talk about them.)*

**Q: What happened with OJ Simpson's case in the criminal court?** *(Elicit responses.)*

In 1995, a jury found OJ Simpson 'not guilty' of the murders of his ex-wife and a male friend of hers in criminal court. The prosecutors could not prove beyond a reasonable doubt that OJ Simpson had committed the crime.

**Q: What happened with OJ Simpson's case in the civil courtroom?** (*Elicit responses.*)

In the civil trial, the families of the victims sued OJ Simpson for damages. Through a preponderance of evidence, a jury unanimously held OJ Simpson liable for damages and awarded the families \$40 million.

In this case, the prosecutor lacked evidence to prove the criminal charges *beyond a reasonable doubt*, but there was enough *preponderance of evidence* to pursue a civil lawsuit and win the case in that court.

Remember, criminal proceedings have a higher standard of proof than civil proceedings. The consequences of either can bring nothing but hardship for anyone that violates laws and policies.

**Q: What questions do you have about criminal or civil proceedings?** (*Answer questions, if any.*)

Criminal and civil proceedings are not the only legal actions employees may face. There are also administrative proceedings which may occur at the local level.

## Disciplinary Proceedings

- Department | Facility | TJJD
- Preponderance of evidence against employee

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- Alleged behavior occurred
- Behavior violates local rules

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## Slide 12: Disciplinary Proceedings

Instructor's Corner:

PG: 12

🗨️ This slide comes up with a picture. Click for the components of disciplinary proceedings, consequences, and TJJD proceedings to appear as they are mentioned in the LP.

### Trainer Notes:



### Disciplinary Proceedings

Disciplinary proceedings may be initiated when an employee has failed to follow local policies and procedures, or committed acts in violation of the law or other ethical violations.

*(Click for each of four components to appear as you discuss them.)*

**Q: What parties are involved in a disciplinary proceeding?** *(Elicit responses.)*

There are at least two parties involved in disciplinary proceedings at the local level, including:

- the department, facility, or TJJD
- the employee or the person suspected of violating policy

In disciplinary proceedings, the burden of proof is on the local department, with the standard being a *preponderance of evidence*. The local investigating authority must prove the employee's behavior:

- occurred as alleged; and
- was a violation of department rules

*(Inform participants all of the following are not listed in the participant guide.)*

When an allegation occurs against an employee at the local level, possible consequences include:

- Warning
- Reprimand
- Transfer
- Demotion
- Loss of JPO | JSO certification
- Termination | Possible criminal indictment
- Possible conviction | Jail Time
- Criminal record

Every department will have certain procedures in place regarding investigations; it's important for you to be aware of those procedures in order to protect yourself. It's pertinent to remember if you are questioned, you are expected to fully, accurately, and promptly answer any and all work-related questions regarding an allegation. You are also expected to be truthful at all times; and avoid making or submitting false or intentionally misleading verbal or written statements.

The local investigative authority may also interview the victim(s) or other juveniles with information regarding the allegation. Even if the victim does not cooperate, a solid case can still be built by using corroboration, or confirmation, from other juveniles, coworkers, video, and documentation. Keep in mind, if other violations are discovered during the

investigation, which were not originally reported, disciplinary action will occur for these as well. Typically, you are not able to appeal the findings of an investigation, but may appeal disciplinary actions. Again, it is important to be familiar with local procedures regarding investigations.

**Q: What questions do you have about local disciplinary proceedings?** (*Elicit responses.*)

### **TJJD Disciplinary Proceedings**

TJJD recognizes most certified officers not only adhere to the highest standards of professionalism, but also take pride in the crucial role they play in working with juveniles. However, as we have learned today, there are some instances in which a JPO or JSO may risk losing the privilege of working as a certified officer in the field of juvenile justice. In accordance with Chapter 349 of the Texas Administrative Code, TJJD is required to take appropriate administrative steps to initiate discipline to a certified officer if:

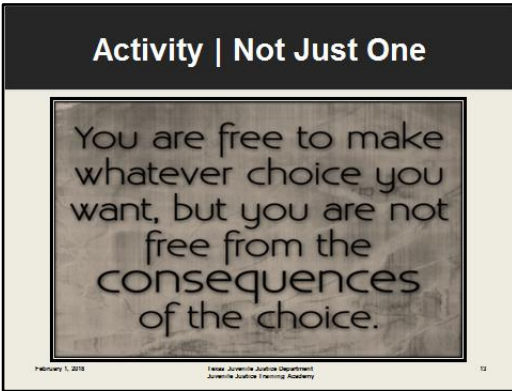
- TJJD discovers through a monitoring visit, compliance audit, or as a result of receiving notice in any other manner an individual currently certified by TJJD does not meet the requirements in Chapter 344 of the Texas Administrative Code, relating to the eligibility of certification;
- TJJD confirms a certified officer has committed a Code of Ethics violation; or
- TJJD confirms abuse, neglect, or exploitation has occurred in a juvenile justice department, program, or facility.

TJJD is also required to ensure every officer is provided due process prior to revocation or

suspension of certification. TJJD's disciplinary process is conducted in addition to any resolution of a matter that either previously occurred or may be ongoing at the local level. Any action taken by TJJD is solely related to an individual's certification as a probation officer, supervision officer, or community activities officer. It is independent of actions taken by an employer or of any criminal or civil suit which may arise out of the individual's conduct. In other words, one incident could result in a certified officer being disciplined at work, convicted of a crime, civilly sued, and having his or her certification suspended or revoked by TJJD.

**Q: What questions do you have about local disciplinary proceedings?** (*Elicit responses.*)


Now that we are more familiar with criminal, civil, and disciplinary proceedings juvenile justice professionals may face, let's do an activity.



### Slide 13: Activity: Not Just One

Instructor's Corner:

PG: 12

 This slide comes up with a black screen. When prompted in the LP, click to play video. Click again for a quote to appear.

### Trainer Notes:



### For Your Eyes Only – Activity: Not Just One

1. Have participants turn in their participant guide to the activity titled *Not Just One*.
2. Watch the video titled *Juvenile Case Worker Sued*.
3. Individually, have the participants answer the questions in the participant guide.
4. Discuss in the large group the answers to the questions.

Activity Point: The point of this activity is to help staff summarize the liabilities and consequences in a real scenario and realize the consequences are rarely limited to just one.



### Activity: Not Just One

**Time: 10 Minutes**

Typically, most juvenile justice professionals do not begin their employment intending to violate a juvenile's rights, disregard federal and state laws or agency policy, or engage in criminal activity. Actually, employees may not even be aware of the many consequences they may face if they do violate law or policy. Open your participant guide to the activity titled *Not Just One*. First, we'll watch a video and then individually you'll answer the



questions in your participant guide. We'll then discuss the answers as a large group.

*(Click to play video. Length of video is 1 minute and 58 seconds in length.)*

## **Debrief**

*(Have varying participants read and answer each question. Then provide the additional information as show below.)*

### **1. How did the situation start?** *(Elicit responses.)*

It started with lip gloss and a note. The juvenile didn't want to get in trouble for having lip gloss, which is considered contraband, and the juvenile worker returned with an inappropriate note after talking with her. While these may seem like insignificant items, they led to dire consequences.

*(For this next question, encourage participants to look in their participant guide at the common liabilities discussed earlier.)*

### **2. Referring to the list of common liabilities, how did this juvenile worker fail to protect the juvenile?** *(Elicit responses.)*

The juvenile worker did not protect her from:

- abuse, neglect, and exploitation
- improper sexual activity with a person in custody

- violation of her civil rights

**3. What were some of the legal consequences mentioned?** *(Elicit responses.)*

The legal consequences included the:

- juvenile worker being charged criminally with *Endangering the Welfare of Children* and *Official Oppression* for making a sexual advance of a juvenile;

*(In Texas, Endangering the Welfare of Children is known as Injury to a Child, Elderly Individual, or Disabled Individual or Abandoning or Endangering Child.)*

- juvenile worker being sued by the family for intentional infliction of emotional distress and negligence;
- agency being sued as a result of the juvenile worker's actions for negligent hiring and supervision as well as vicarious liability; and
- juvenile worker being suspended from his job without pay.

**4. What might be some other legal consequences not mentioned?** *(Elicit responses.)*

Additional consequences may include jail or probation, a criminal record, financial burden, public scrutiny, a tainted reputation, and employment hardships.

**Q: What additional thoughts do you have about the video?** *(Elicit responses.)*

*(Click for quote to appear. Have a participant read the quote.)* "You are free to make whatever choice you want, but you are not free from the consequences of the choice."

This juvenile worker didn't face just one consequence; he faced many for his inappropriate actions. To help you avoid undesirable consequences like those mentioned in the video, educate yourself on approved policy and procedure; think ahead about the decisions you may have to make; and consider the consequences. Decisions you make while supervising juveniles may have an immense rippling effect through your life, the life of your coworkers, and the life of a juvenile.

By now, you may be wondering how to protect yourself from all these potential legal problems. Let's discuss what protections are available to you.



## Slide 14: Protections

Instructor's Corner:

PG: 13

👁️ This slide comes up with a picture. When prompted in the LP, click for each of five protections to appear.

Trainer Notes:



## PROTECTIONS

**Q: Thinking about the video we saw earlier, what could the juvenile worker have done to avoid the situation and protect himself legally? (*Elicit responses.*)**

There are safeguards in place that may protect you from danger, being criminally charged or sued, financial hardships, or from losing your job but only if you choose to abide by federal and state laws in addition to department policies and procedures.

Juvenile justice professionals have four main areas of protection:

- Good Faith
- Scope of Authority
- Qualified Immunity
- Representation

Let's take a moment to talk about each of these.

*(Click for each of four protections to appear as you talk about them.)*

## Good Faith

**Q: What does good faith mean?** (*Elicit responses.*)

Good faith means acting with the honest belief that the action taken or the decision made was appropriate under the circumstances. If you act in good faith, you have no liability.

Acting in good faith occurs when you follow:

- standard operating procedures
- the order of a superior within the realm of your duties or judge
- advice of legal counsel
- statute or case law, even if that law is later declared unconstitutional or the case is overturned

Bad faith is when an action is done with malice or there is intent to harm someone. If you act in bad faith, you are liable.

## Scope of Authority

**Q: What does “scope of authority” mean?** (*Elicit responses.*)

Scope of authority usually includes those duties noted in a job description and of the kind typically conducted by employees who hold the same position. In other words, an employee acts within the scope of his (or her) authority while discharging duties of the

kind usually assigned to him (or her). To be protected from legal proceedings, an employee must be sure they are acting within the “scope of their authority.”

Let’s take a look at two scenarios to help demonstrate what is meant by “scope of authority.”

### **Scenario 1**

A JPO, who is known to be an expert but unlicensed electrician, notices some faulty electrical wiring in a juvenile probation office. The JPO notifies her supervisor of the situation and explains she knows how to correct the problem. The supervisor knows the JPO is not a licensed electrician, but has heard great things about her level of work. The supervisor allows her to perform the work while on duty. A few hours after the JPO repairs the wiring, a fire breaks out.

### **Scenario 2**

A JSO, who is known to be an expert but unlicensed electrician, notices some faulty electrical wiring in a juvenile facility. The JSO notifies his supervisor of the situation and fills out the proper work order form for maintenance. The JSO turns in the work order form per policy but notices sometime later, the wiring still has not been repaired. A short time later, a fire breaks out.

**Q: Which scenario is a good example of acting within the “scope of authority”? (*Elicit responses.*)**

The acts described in the first scenario are not of the kind generally assigned to a JPO. Both the officer and supervisor would be operating outside the scope of their authority. JPOs must not do work other than what they've been trained to do for their particular job. In the first scenario, the JPO and the supervisor may both be liable for operating outside the scope of their authority.

The acts described in the second scenario are of the kind generally assigned to a JSO. The JSO was acting within his scope of authority by turning in the work order form to maintenance. In the second scenario, the JSO followed proper policy and would not be liable.

## **Qualified Immunity**

As juvenile justice professionals, you also have "qualified immunity."

**Q: What is "qualified immunity?"** (*Elicit responses.*)

Qualified immunity is when you are not held personally liable if you reasonably believe your actions are lawful considering the given circumstances.

For example, a JSO uses everything he (or she) knows from training and policy to initiate a physical restraint in a wet shower. The JSO slips during the restraint causing both themselves and the juvenile to fall to the ground, injuring the juvenile.

**Q: Why would this JSO have qualified immunity in this situation?** (*Elicit responses.*)

He (or she) may be protected by qualified immunity because even though the juvenile was hurt, the restraint was conducted according to policy and procedure. There may have been some alternatives the JSO could have used to avoid injury such as using other de-escalation techniques, but the totality of circumstances such as the environmental conditions, housing unit culture, and the mood of the juveniles are all taken into consideration during investigations. Juvenile justice professionals have qualified immunity when they operate with good faith, according to policy, and within their scope of authority.

The reasonable person and good faith standard also apply here. You cannot simply say you thought what you did was lawful. To claim qualified immunity as a defense in a law suit, you must have been acting with honest intentions and acting as a similarly trained juvenile justice professional would have given the circumstances.

## **Representation**

By statute, the Office of the Attorney General (AG) provides legal representation to county employees who follow policy, act within the scope of their authority, and with good faith. (*By a statute in the Human Resource Code, county employees are considered state employees for purposes of the Tort Claims Act.*) If the county does not provide legal representation on behalf of an employee, the AG must be notified. In these cases, the state will pay damages resulting from negligence and civil rights violations, but the law places certain limits or “liability caps” on the amount it will pay out.

**Q: Under what circumstances would the state not pay damages?** (*Elicit responses.*)



The state does *not* automatically cover punitive damages, as it is meant to be a punishment for the defendant, nor does it pay damages or represent employees whose inappropriate acts were:

- willful;
- the result of serious negligence;
- made in bad faith;
- consciously indifferent; or
- a reckless disregard for the rights of another person.

**Q: What questions do you have about the protections just discussed?** (*Answer questions, if any.*)

(Click for additional protection picture to appear as you talk about it.)

## **Additional Protections**

**Q: What are some additional things you can do to protect yourself from legal proceedings?** (*Elicit responses.*)

One significant way to protect yourself from legal proceedings is to document all your activities while you are at work. This involves truthfully completing all paperwork on time. For example, if you report the abuse of a juvenile following all department policies and no one addresses the issue; your documentation of the dates, times, and people to which you reported the behavior may greatly assist in protecting you should a lawsuit be

filed.

You must also document any attempts to report suspect behavior of others. If you report a violation of law committed by another employee or the department itself to an appropriate law enforcement authority, you may be protected from retaliation or disciplinary action. Someone who has a reasonable basis to believe a law was violated and reports in good faith is often known as a “whistleblower” as he (or she) is “blowing the whistle” on the violations committed by a department or an employee.

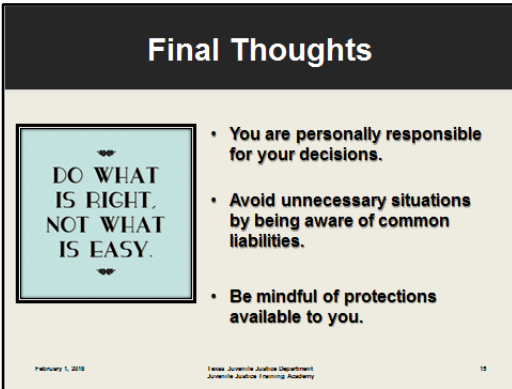
Other protections you must use to shield yourself from legal proceedings include:

- Following all department rules, regulations, and state statutes.
- Asking a supervisor or seeking legal advice when in doubt.
- Being aware of changes in the law and TJJD standards.
- Participating in all mandatory trainings.
- Participating in additional trainings, when possible, to enhance professional development.
- Reporting all observed violations to appropriate supervisors or authorities.
- Avoiding inappropriate conversations with juveniles.
- No off-duty contact with juveniles on supervision.
- Refraining from accepting or giving personal gifts or correspondence.
- Using restraints in the proper way.
- Remaining professional at all times.

If you follow these suggestions and keep in mind the training you have received, your exposure to liabilities and lawsuits may be greatly reduced. Just remember to weigh your choices and their consequences as you perform your job duties.

**Q: What final questions do you have about the legal concepts you learned today?**


*(Answer questions, if any.)*



## Slide 15: Final Thoughts

Instructor's Corner:

PG: 14

 This slide comes up with a picture. When prompted in the LP, click for each of three summary statements to appear.

Trainer Notes:



## FINAL THOUGHTS

*(Click for each of three summary statements to appear as you talk about them.)*

As juvenile justice professionals, remember:

- You are personally and legally responsible for your decisions.
- Avoid unnecessary situations by being aware of common liabilities juvenile justice professionals often face.
- Be mindful of the various protections available to you.

As a reminder, the material covered today is for informational purposes only and must not be considered “legal advice.” While we encourage questions, contact your supervisor, local county prosecutor or a private attorney for questions about specific legal matters. Again, for technical assistance and resource information, contact the Texas Juvenile Justice Department’s (TJJD) Legal Help Desk at 512.490.7121.

Thank you for participating in the *Understanding Professional Liability* course today.